

NTSB Order No. EA-4443

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 8th day of April, 1996

Docket SE-13737RM

revocation to a 365-day suspension, despite having found that respondent knowingly operated an aircraft on numerous occasions (at least 11 times) without a valid airman certificate in violation of section 61.3(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 61).¹ As before, the Administrator has appealed the sanction reduction only.² For reasons discussed infra, we grant the appeal and reinstate the Administrator's order of revocation.

In his decision on remand the law judge reemphasized his conclusion that, if the Administrator had timely requested the surrender of respondent's airman certificates, then respondent possibly might not have committed the violation. The determination that the Administrator had been derelict, the law judge insisted, was a "proper mitigating factor" because it "may have arguably contributed to respondent's violations," especially since respondent is a native of Germany and appeared in the first case pro se.³ He further maintained that deference was not owed

¹The law judge repeated his finding that respondent "knew or reasonably should have known that his pilot's certificates were suspended as of April 23, 1994, and that he could no longer exercise the privileges of his certificate, on or after April 23, 1994, until the 30-day suspension had been served." Response to the Board's Remand Order at 1, a copy of which is attached.

²The Administrator filed a brief on appeal from the decision on remand and respondent filed a brief in reply.

³A suspension of respondent's commercial and special issuance private pilot certificates had been upheld by the law judge on April 12, 1994, following an evidentiary hearing. At that time, the law judge advised respondent that the 30-day suspension of his certificates would become effective 11 days from the date of the oral initial decision (i.e., April 23, 1994), unless stayed by the filing of a timely appeal.

to the Administrator's choice of sanction since the Administrator failed to place into the record any sanction policy guidance or validly adopted interpretations of law and regulations upon which he intended to rely. Because we disagree with the law judge on the application of Board precedent, we do not reach the issue of whether a departure from the FAA's Sanction Guidance Table was within the law judge's discretion.

If, as the law judge found, respondent operated an aircraft when he knew that his certificates had been suspended, it makes no difference, for purposes of sanction, that the violations might not have occurred if surrender of respondent's certificates had been requested sooner. At issue in this proceeding was whether the respondent's conduct demonstrated that he lacked the care, judgment, and responsibility required of a certificate holder, not whether the Administrator could or should be more efficient in seeking the surrender of suspended certificates.

No case law has been presented to us, and we are aware of none, stating that an airman's qualifications are not implicated by the deliberate act of operating an aircraft when he knows his certificate is under suspension.⁴ To the contrary, our precedent

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Respondent did not submit his certificates to the Administrator until June 30, 1994, after receiving two letters, dated June 13th and 16th, from the Administrator, and after operating an aircraft several times between April 23 and June 1994. The Administrator issued a revocation order to respondent on July 19, 1994, and a hearing was conducted on January 25, 1995.

⁴Respondent was present at the first hearing and was told in plain, concise language that the suspension would begin in 11 days. He, therefore, was aware, and the law judge so found, that by operating an aircraft after April 23, 1994, he was operating

unequivocally establishes that revocation is warranted when an airman has operated an aircraft while his pilot certificate was suspended, as such action "demonstrate[s] that the airman lacks the requisite care, judgment, and responsibility required of a certificate holder." Administrator v. Gough, NTSB Order No. EA-4340 at 5 (1995), citing Administrator v. Dunn, 5 NTSB 2211 (1987).⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted; and
2. The initial decision is reversed to the extent it modified the Administrator's order of revocation.

HALL, Chairman, FRANCIS, Vice Chairman, GOGLIA, Member of the Board, concurred in the above opinion and order. HAMMERSCHMIDT, Member, did not concur. BLACK, Member, did not participate.

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 an aircraft during his period of suspension. In view of that finding, neither respondent's asserted reliance on the advice of other pilots to keep flying until the FAA asked for his certificates back, nor the possibility that he may have better understood the requirement to refrain from operating an aircraft and to surrender his certificates to the Administrator if he had been represented by an attorney is of mitigating effect.

⁵See also Administrator v. McCormmach, 4 NTSB 1503, 1505 (1984); Administrator v. Stix, 3 NTSB 296, 301 (1977).